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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2253/2013*, **

Communication submitted by:	A.P.J. (represented by counsel)
Alleged victim:	The author
State party:	Denmark
Date of communication:	10 June 2013 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 12 June 2013 (not issued in document form)
Date of adoption of Views:	16 March 2017
Subject matters:	Torture; cruel, inhuman or degrading treatment or punishment; deportation to the Islamic Republic of Iran; freedom of expression; equality before the law
Procedural issue:	Lack of substantiation
Substantive issues:	Torture; cruel, inhuman or degrading treatment or punishment
Articles of the Covenant:	7, 19 and 26
Article of the Optional Protocol:	2

1.1 The author of the communication is A.P.J., a national of the Islamic Republic of Iran born on 23 October 1981. He claims that his deportation to the Islamic Republic of Iran by Denmark would constitute a violation of articles 7, 19 and 26 of the Covenant. He is represented by counsel, Marianne Volund. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 12 June 2013, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

* Adopted by the Committee at its 119th session (6 March-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

1.3 The author was deported to the Islamic Republic Iran on 10 June 2013. He was escorted as far as the airport in Tehran. After having received the author's expired Iranian passport and a copy of the author's Iranian proof of nationality, the Iranian authorities accepted the author back into the country.

Factual background

2.1 The author and his parents are ethnic Kurds and Sunni Muslims. The author's parents fled the Islamic Republic of Iran to Iraq, where he was born in the Al-Tash camp in Ramadi. They returned to the Islamic Republic of Iran when the author was 11 years old. They lived in Sare Pole Zahab, where the author attended school for about four years. The author states that he cannot read or write in Farsi or Kurdish. He alleges that he has not been a member of any Kurdish organization, but that his brother was an active member of the Democratic Party of Iranian Kurdistan.

2.2 The author claims that in 2008, he started helping a friend, A.M., who distributed medication smuggled to the Islamic Republic of Iran from Iraq. He was contacted by A.M. because the author's family owned land in a village by the border, and they had a card allowing them to enter the town without being controlled. The author helped to transport medication about 15 times. However, the last two times he did so, he found out that his friend was also transporting political material from the Democratic Party of Iranian Kurdistan.

2.3 On 22 October 2008, Iranian authorities searched the author's house, asking for him. He was absent, as he was visiting a friend living in the same town. In order to avoid being arrested, the author went to hide in his cousin's garage. While the author was hiding, his brother came to visit and informed him that their father had been arrested by the intelligence service. After hearing the news, the author decided to leave the country and went to Turkey with the help of a smuggler.[1] He claims that he bribed the authorities to stamp his passport without registering him in the computer system. The author indicates that on his way to Denmark, he had been arrested in Greece, Germany and Italy, where his fingerprints were taken. He also states that the smuggler told him not to tell the Danish authorities his real date of departure from the Islamic Republic of Iran, i.e., the date appearing in his passport. He claims that he followed the smuggler's instructions because he feared for his life and because his passport had been taken from him by the smuggler while they were in Turkey.[2]

2.4 The author submits that after his departure, his father was questioned a couple of times and was taken once to the police station to be questioned about the author's whereabouts. He also indicates that his brother informed him that the authorities had asked about the author for about one month after his departure, and that he was told that his friend, A.M., had been arrested just before the authorities searched the author's house in October 2008.[3] The author also claims that his brother has advised him not to return home, as he risks being arrested.

2.5 On 9 March 2009, the author arrived in Denmark. Since he is illiterate, he was unable to submit a written asylum application. The police interviewed him on 9 March, 26 May and 11 June 2009. On 11 November 2009, he had an interview with the Danish

[1] The author first stated to the Danish authorities that he left the Islamic Republic of Iran around 19 February 2009. However, the Refugee Appeals Board pointed out in its decision that, according to the stamp in his passport, the author had left on 29 October 2008.

[2] The State party has indicated that the author entered Denmark without any valid travel documents. However, his passport was later forwarded to an address in Denmark and was confiscated by the Danish authorities.

[3] In the decision of the Refugee Appeals Board, it is stated that the author told the Danish police on 5 May 2009 that his friend A.M. had been arrested around 15 February 2009. In the decision, the Board also indicated that, in a different interview with the Danish police, held on 11 November 2009, the author affirmed that A.M. had been arrested on 21 November 2008. When asked about the contradiction, the author stated that he had mixed up the dates. The Board also indicated in the decision that when asked about his friend A.M., the author had stated that he believed his friend was still being detained, but that he did not know if he had been charged or convicted.

Immigration Service. The author submits that, while in Denmark, he participated in several demonstrations against the Iranian authorities, held in front of the Iranian embassy, in particular in 2012 and 2013, including a hunger strike in May and June 2012. He indicates that there is publicly accessible information on YouTube and a public group Facebook profile where he appears with posters against the Government of the Islamic Republic of Iran. Moreover, during the hunger strike, he criticized the Iranian regime in a film that has been shown in the Islamic Republic of Iran. While his criticism was cut from the film, and the film has become pro-Government propaganda, the author claims that given that the film's director is pro-regime, it is likely that the director has provided the whole film to the Iranian authorities, including the author's interview in which he criticizes the Government.

2.6 On 25 November 2009, the Danish Immigration Service rejected the author's asylum request. The author appealed this decision to the Refugee Appeals Board. On 28 April 2010, the Board rejected the appeal. It found that the fact that the author had provided a false date of departure from the Islamic Republic of Iran had weakened his credibility, and noted that the author had also provided contradictory information regarding the date of the arrest of his friend A.M.[4] In addition, it considered the author's statement about the illegal smuggling of goods and material from the Democratic Party of Iranian Kurdistan not convincing, as he should have been aware of the danger of smuggling such leaflets and yet agreed to continue to do so, even though he had specifically indicated to the Danish authorities that he had never been politically active. The Board also found "remarkable" that the author had not sought to obtain more information about the situation of his friend A.M. after his detention, including whether he had been sentenced, considering that the arrest of A.M. was a crucial element of the author's asylum application. Further, the Board noted that the general situation of Kurds in the Islamic Republic of Iran could not justify in itself an asylum request.

2.7 The author requested a reopening of his asylum proceedings in August 2010[5] and sent further information to the Refugee Appeals Board in August 2012.[6] He indicated that he had been unable to present his asylum case adequately, as he had been under pressure and "mentally uncomfortable" during the interviews with the immigration authorities, due to the events he had been exposed to in the Islamic Republic of Iran and to the threats received from the smugglers during his trip to Denmark. As a result, he had ended up confusing details and dates in his account. The author had also provided the Board with a summons ordering him to appear before the sixth division of the District Court on 19 November 2008 on the occasion of his "case" before the Court. The author reiterated his allegations regarding the risk he would be exposed to if returned to the Islamic Republic of Iran, adding that due to his participation in a hunger strike aimed at criticizing the Iranian regime and protesting against the situation of immigrants in Denmark, held in May 2012, the risk for him in the Islamic Republic of Iran had increased, in particular given that photographs of the protest had been widely circulated on Facebook. The author also indicated that those participating in the hunger strike had been blacklisted by Iranian authorities, and that their families had been subjected to harassment by the Iranian Ministry of Intelligence.

2.8 On 27 March 2013, the Refugee Appeals Board rejected the author's request to reopen his asylum proceedings, as it considered that no new substantial information had been submitted by the author.[7] It indicated that no evidential weight could be attached to the summons submitted by the author, as it had been served on 10 November 2008, after his departure from the Islamic Republic of Iran. The Board recalled that when the author was asked by the Danish immigration authorities if the Iranian authorities had delivered any summons to him after his departure, he had replied in the negative. In addition, he had not explained how he had come into possession of the summons or why he had not submitted it earlier to the State party's authorities, taking into account that it dated from 2008. The Board considered that the author's allegations regarding his mental state when he was interviewed by the Danish police could not change the assessment of his credibility, as the

[4] See footnotes 1 and 3 above.

[5] The author did not provide a copy of his request.

[6] The author sent a letter to the Board about his participation in the hunger strike held in May 2012.

[7] A copy of the decision has been provided by the State party.

statements he made during the asylum proceedings were implausible, incoherent and inconsistent. With regard to the hunger strike, the Board stated that the author had not sufficiently established the probability of any risk of persecution in the Islamic Republic of Iran, as he had not provided any information indicating that he had made any statements to the press or any other declaration in relation to such event that could have exposed him to a risk upon return. In addition, he had not provided any evidence corroborating his allegation that the families of the hunger strikers had been subjected to harassment by the Iranian Ministry of Intelligence.

The complaint

3.1 The author alleges that his deportation to the Islamic Republic of Iran will put him at risk of inhuman and degrading treatment, in violation of article 7 of the Covenant. He claims that the Iranian authorities are aware of his activities in Denmark against the Government of the Islamic Republic of Iran, since the information concerning such activities, including the hunger strike, are available on YouTube and Facebook. Should the Iranian authorities not already have knowledge of the author's Facebook account, there is a high risk that they will get access to it if he is removed to the Islamic Republic of Iran.[8] In addition, it is well known that Iranian authorities film the demonstrations in front of their embassies and that they monitor the Internet. Therefore, he submits that, given his participation in several demonstrations in front of the Iranian embassy in Denmark, he would be at risk of ill-treatment or torture if deported to the Islamic Republic of Iran.[9]

3.2 The author further claims that, as he does not have a valid passport,[10] he would be exposed to further risk of a violation of article 7 upon return to the Islamic Republic of Iran. He claims that Iranians who return without a passport or any valid travel document are arrested and brought to a special court located at the airport in Tehran. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, and their connection with any organization or groups and any other circumstances.[11] Considering that the procedure is applied to people who are deported to

[8] The author refers to a report by the United Kingdom of Great Britain and Northern Ireland, Home Office, "Iran: country of origin information (COI) report" (January 2013). The report cites the *Wall Street Journal*, which reported in 2009 that, according to former Iranian lawmakers and others with knowledge of the programme, the Islamic Republic of Iran had been conducting a campaign of harassing and intimidating members of its diaspora worldwide — not just prominent dissidents — who criticized the regime. According to the newspaper's sources, "part of the effort involves tracking the Facebook, Twitter and YouTube activity of Iranians around the world, and identifying them at opposition protests abroad". The newspaper further indicated that dozens of individuals in the United States of America and Europe who had criticized the Islamic Republic of Iran on Facebook or Twitter had said that their relatives in the Islamic Republic of Iran had been questioned or temporarily detained because of those postings. Some individuals interviewed for the article who had recently travelled to the Islamic Republic of Iran said they had been forced by police at the airport in Tehran to log in to their Facebook accounts. Several reported having their passports confiscated because of harsh criticism they had posted online about the way the Government had handled its controversial elections in June 2009.

[9] The author refers to Reporters without Borders, "Enemies of the Internet 2011 — Iran", available at www.ecoi.net/local_link/156365/273147_de.html. According to the report, in January 2011, the authorities finished setting up the first Iranian cyberpolice to strengthen their control of the Internet. On 20 May 2010, an Islamic Revolutionary Guard Corps commander officially confirmed the creation of an Iranian "cyberarmy", which has already cracked down on online networks deemed "destructive" and arrested hundreds of citizens. He also refers to the above-mentioned 2013 country of origin report by the United Kingdom Home Office, according to which a *Times* article dated 11 July 2009 reported that there had been protests outside the Iranian Embassy in London. The author of the article had made the following observation: "From the rooftop of the Iranian Embassy in London an unmanned video camera records the faces of the angry crowd gathered in Knightsbridge."

[10] The author indicates that the Iranian embassy in Denmark, for many years, has not been willing to issue travel documents to Iranian citizens who are not leaving Denmark voluntarily. Therefore, he would not have a valid travel document were he to be removed to the Islamic Republic of Iran.

[11] The author refers to the above-mentioned country of origin information report of the United Kingdom Home Office report, p. 260.

the Islamic Republic of Iran without a passport containing an exit visa,[12] and given the author's background, namely, that he is a person of Kurdish origin who carried out illegal activities (smuggling material from the Democratic Party of Iranian Kurdistan into the country) before leaving the Islamic Republic of Iran, and his engagement in political activities against the Government of the Islamic Republic of Iran while he was in Denmark, the author states that he would be exposed to a further risk of persecution.[13]

3.3 The author claims that the State party would also violate article 19 of the Covenant since, if returned to the Islamic Republic of Iran, he would not be able to express his sympathy for Kurdish political parties and freely express his opinions, which would breach his right to freedom of expression. In addition, the author fears that his right to live free of discrimination, enshrined in article 26 of the Covenant, would also be violated, given the situation of Kurds in the Islamic Republic of Iran and taking into account his political support for Kurdish organizations.

State party's observations

4.1 On 12 December 2013, the State party submitted its observations on the admissibility and merits of the communication. It submits that the communication is not substantiated, as the author has not demonstrated any possible breach of the Covenant resulting from his deportation to the Islamic Republic of Iran.

4.2 The State party describes the structure, composition and functioning of the Refugee Appeals Board,[14] as well as the legislation applying to asylum proceedings.[15] The Board analyses whether an asylum applicant may have a well-founded fear of being subjected to specific and individual persecution or to a risk of such persecution upon return to his or her country of origin, taking into account any information on persecution prior to the asylum seeker's departure from his or her country of origin (sect. 7 (1) of the Aliens Act), and also considers whether an alien risks being subjected to the death penalty or to torture or ill-treatment if returned to his or her country of origin. The Board considers the conditions for issuing a residence permit met when there are specific and individual factors rendering it probable that the asylum seeker will be exposed to a real risk of death or of being subjected to torture or ill-treatment in case of return (sect. 7 (2) of the Aliens Act).

4.3 The State party argues that the author has failed to establish a prima facie case for the purposes of admissibility in respect of the alleged violation of article 7 of the Covenant, since he has not substantiated that he has faced any risk or danger following his deportation to the Islamic Republic of Iran; therefore, his allegations under this provision should be considered ill-founded. Regarding his allegations under article 19, the State party refers to the author's statement that States parties are obliged to not deport persons who are at risk of deprivation of their rights, including their freedom of expression, which encompasses the possibility of sympathizing with and expressing the views of Kurdish political parties. The State party indicates that the author has not elaborated on that statement as to how his freedom of expression has been or would be violated by his deportation, and thus those allegations should be considered inadmissible for lack of substantiation. As for the author's allegations under article 26 of the Covenant, the State party refers to the author's statement that, as a result of his deportation, his right to live as a Kurd without discrimination has been violated. The State party points out that the author has not elaborated further on that statement and requests that the allegation be considered inadmissible for lack of substantiation.

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[12] Ibid.

[13] The author refers to the joint report of the Danish Immigration Service, the Norwegian Country of Origin Information Centre (LANDINFO) and the Danish Refugee Council, entitled "On conversion to Christianity: issues concerning Kurds and post-2009 election protestors as well as legal issues and exit procedures" (2013), available at www.nyidanmark.dk/nr/rdonlyres/a8c2c897-1ca9-49d1-ba32-ec3e599d646d/0/iranendeligudgave.pdf. According to the joint report, there is no information available regarding the situation of deportees in the Islamic Republic of Iran, as the International Organization for Migration deals only with persons who have voluntarily returned to the country.

[14] See communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.3.

[15] The State party refers to sections 7 (1) and (2) and 31 (1) and (2) of the Aliens Act.

4.4 The State party further indicates that the Committee is not competent to review the author's allegations under articles 19 and 26, as it would imply an extraterritorial application of the Covenant, given that such violations would not take place in Denmark or in any territory under the effective control of Danish authorities, but rather in the Islamic Republic of Iran. The State party refers to several decisions by the European Court of Human Rights, which has applied extraterritorial effect in respect of articles 2 (right to life) and 3 (prohibition of torture) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)[16] on the basis of the fundamental importance of those provisions. However, the State party points out that the Court has also stated that "it cannot be required that an expelling Contracting State only return an alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention".[17] The State party considers that a similar reasoning can be applied in the present case, and recalls that article 1 of the Optional Protocol and rule 96 (a) of the Committee's rules of procedure stipulate that the Committee has the competence to consider communications from individuals who are subject to the jurisdiction of a State party and who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. Although the Committee has found on a number of occasions that deportations of persons by a State party to other States would result in a foreseeable breach of their right to life or to their freedom from torture as enshrined under articles 6 and 7 of the Covenant, it has never considered a complaint on its merits regarding the deportation of a person who feared a violation of provisions other than articles 6 and 7 in the receiving State. Extraditing, deporting, expelling or removing a person who fears that his rights under articles 19 and 26 may be violated by another State party will not cause irreparable harm, the standard set by the Committee through its jurisprudence.[18] The State party therefore requests that this part of the communication be declared inadmissible *ratione loci* and *ratione materiae* pursuant to rule 96 (d) of the Committee's rules of procedure, read together with rule 96 (a) and article 2 of the Optional Protocol.

4.5 Regarding the merits of the communication, the State party submits that the author has failed to establish that his return to the Islamic Republic of Iran constitutes a violation of articles 7, 19 and 26 of the Covenant. Regarding article 7, the State party indicates that its obligations under such provision are reflected in section 7 (2) of the Aliens Act, which establishes that a permit will be issued to an alien if he or she risks being subjected to the death penalty or to torture or ill-treatment in his or her country of origin. The State party recalls that the author alleged that he would be at risk of a breach of article 7 of the Covenant if returned to his country because he had been involved in smuggling political material from the Democratic Party of Iranian Kurdistan and medicine from Iraq to the Islamic Republic of Iran and had participated in several demonstrations against the Government of the Islamic Republic of Iran while in Denmark, including a hunger strike that had been broadly disseminated through Facebook and a film that had been shown in the Islamic Republic of Iran. The author also feared being returned to the Islamic Republic of Iran without a valid travel document.

4.6 The State party indicates that the Refugee Appeals Board undertook a comprehensive and thorough examination of the evidence submitted by the author. It considers that he is trying to use the Committee as an appellate body to have the factual circumstances of his asylum application reassessed. The State party submits that the

[16] The State party refers to the European Court of Human Rights, applications No. 14038/88, *Soering v. the United Kingdom*, judgment of 7 July 1989, and No. 27034/05, *Z and T v. the United Kingdom*, decision of 28 February 2006.

[17] European Court of Human Rights, application No. 17341/03, *F. v. the United Kingdom*, decision of 22 June 2004, p. 12.

[18] The State party refers to paragraph 12 of the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which the Committee states that the article 2 obligation requiring that States parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.

Committee must give considerable weight to the Board's findings, as the Board is better placed to assess the facts in the author's case. The State party recalls that the Board considered that the credibility of the author had been weakened by contradictory information provided during his asylum proceedings, in particular regarding his departure date from the Islamic Republic of Iran and the date of the arrest of his friend A.M. In addition, the Board took into account that the author had stated that he did not consider himself as politically active and that he had left the Islamic Republic of Iran on his own authentic passport.

4.7 The State party submits that the decisions of the Refugee Appeals Board dated 28 April 2010 and 27 March 2013 were taken after a thorough review of the author's claims and the evidence he submitted, in accordance with domestic legislation. The State party agrees with the Board insofar as it did not attach any evidential weight to the summons submitted by the author when he requested the reopening of his case,[19] as he did not explain why he submitted the document so late in the proceedings. Furthermore, he did not provide a satisfactory explanation regarding the date of the summons — 10 November 2008, after he left the Islamic Republic of Iran — or as to why he did not mention the document in his statement before the Board when he was asked whether he had received any summons. The State party further highlights that the author has not sufficiently established the probability that he would be subjected to persecution in the Islamic Republic of Iran due to his participation in the hunger strike held in May 2012 in Denmark. It submits that nothing proves that the author was exposed to the press or that he stood out to any particular degree, as he did not appear to be prominent in any of the pictures of the hunger strike to which the Board has had access.

4.8 The State party further indicates that the Refugee Appeals Board has included all relevant information in its decisions and considers that the author has not provided any additional information or evidence to the Committee sufficiently establishing the probability that his rights under article 7 of the Covenant may be violated. Regarding the author's statement to the Committee that he had been interviewed by a film director in connection with his participation in demonstrations against the Government of the Islamic Republic of Iran and in the hunger strike held in May 2012 and that the film has been shown on Iranian television, the State party states that the author never mentioned the interview during the asylum proceedings, that the information is solely based on his statements and that he has not provided any satisfactory explanation as to why he did not mention the interview to the Danish authorities. Therefore, the State party submits that the information cannot be considered as fact.

4.9 The State party concludes that the author has not sufficiently established the probability that his participation in the demonstrations and the hunger strike in Denmark reflects an in-depth political interest, taking into account that he had previously stated that he was not politically active.[20] Consequently, it considers that the author has not been exposed as an opponent to the Government of the Islamic Republic of Iran and, therefore, he would not be exposed to any risk in his country of origin. The State party further reiterates that the alleged violations of articles 19 and 26 of the Covenant have not been substantiated.

Author's comments on the State party's observations

5.1 On 6 February 2014, the author submitted his comments on the State party's observations. The author indicates that when he arrived at the airport in Tehran after being deported from Denmark, on 10 June 2013, he was first questioned by the passports office and then by the police. He was asked about where he had been, with whom he had been in contact, and whether he had engaged in political activities while he was abroad. He claims that he was specifically asked whether he had participated in the "Danish hunger strike" and whether he knew who had joined that hunger strike. He denied everything. He indicates that before being deported, he had injured himself to try to avoid the deportation and that, once in the Islamic Republic of Iran, he was questioned about his injuries. The author also

[19] See para. 2.7 above.
[20] See para. 2.6 above.

claims that he was asked why he had not requested an extension for his passport before it expired, and that the fact that he was born in Iraq caused "some problems", as there were discussions as to whether he should be deported to Iraq. After the questioning, he was detained for three days and then released. The police kept his passport and he was told that he should return to the passport office for further questioning and to recover his passport.

5.2 In October 2013, as instructed, the author went to the passport office in Tehran. He was asked to fill out a questionnaire with questions similar to those he had been asked when he arrived. He was also asked to indicate how he left the Islamic Republic of Iran and to provide information on who had helped him to leave the country. He was detained for 48 hours, his passport was not returned to him and he was informed that the authorities were analysing his situation and that consequently he could not leave the country. He was instructed to stay in the Kermanshah area. The author further claims that intelligence officers were present during the interrogations. After the questioning, he went back to his grandparents' house in the village of Pabli, where he is hiding and looking for a way out of the country, as he is afraid that the authorities will find out that he criticized the Government during his interview with the film director.

5.3 The author further submits that other Iranian asylum seekers who were interviewed for the film have been granted refugee status in Denmark on the grounds of their participation in the film.[21]

Further submissions by the State party

6.1 On 24 June 2014, the State party provided further observations to the Committee. It refers to the author's allegation that his participation in the interview with the film director would increase the risk he would be exposed to in the Islamic Republic of Iran, and to the author's allegation that in a similar case, the Refugee Appeals Board had granted refugee status to another asylum seeker who had given an interview for the same film. The State party indicates that the circumstances of the other asylum seeker were very different from those of the author. For example, that asylum seeker had been politically active in both the Islamic Republic of Iran and in Denmark, unlike the author, and therefore the Board had considered as fact that the asylum seeker had been taking part in different activities in Denmark where he had been criticizing the Iranian regime to some extent. Moreover, the majority of the Board had attached weight to the fact that the asylum seeker had been interviewed for the mentioned film and considered as fact that it had been shown on Iranian television, where it came across as a propaganda film for the Government. Therefore, the Board had considered that the asylum seeker had sufficiently established the probability that he would be exposed to a risk if returned to the Islamic Republic of Iran, as it was possible that the film had been transmitted to the Iranian authorities. The Board, taking into account the asylum seeker's background and the fact that he had left the Islamic Republic of Iran illegally, had found that the asylum seeker would be at risk of persecution if returned to the Islamic Republic of Iran.[22]

6.2 The State party further reiterates that the Refugee Appeals Board takes its decisions on the basis of a specific and individual assessment of the applicant's asylum grounds, the Board's knowledge of the general situation in the relevant country and the specific details of the case. Therefore, the State party maintains that there is no basis for doubting the assessment made by the Board in its decisions of 28 April 2010 and 27 March 2013, in which the Board considered that the author had not established that there were substantial grounds for believing that his life was in danger or that he faced a risk of torture or ill-treatment in the Islamic Republic of Iran. Furthermore, the State party notes that from the information provided by his counsel, it does not appear that the author has been subjected to torture or ill-treatment since being returned.

6.3 The State party therefore reiterates that the communication should be declared inadmissible as it is manifestly ill-founded. It also reiterates that the author's allegations

[21] The author provides a copy of a decision of the Refugee Appeals Board dated 18 November 2013 and a partial unofficial translation of the decision. See footnote 24 below.

[22] See footnotes 21 and 24.

under articles 19 and 26 are inadmissible *ratione loci* and *ratione materiae*. The State party further indicates that if the Committee finds the communication admissible, it should declare it as not substantiated on the merits, as the author has not established that there are substantial grounds for believing that his return to the Islamic Republic of Iran constituted a violation of articles 7, 19 and 26 of the Covenant.

Further submissions by the author

7.1 On 5 August 2014, the author's counsel submitted further comments on the State party's observations. Counsel informs the Committee that in the case in which the Refugee Appeals Board granted refugee status to another asylum seeker who had been interviewed for the film referred to by the author,[23] the Board had rejected the asylum seeker's initial application, as it had not considered that he had been politically active in the Islamic Republic of Iran. The Board had also rejected two requests to reopen the case, submitted by the same asylum seeker on 10 October 2008 and on 1 March 2012; only after the third request to reopen the case on the grounds of his political activities in Denmark had the Board granted the asylum seeker refugee status. Counsel indicates that in that third request, the asylum seeker did not submit new information on his political activities in the Islamic Republic of Iran and that during the hearing held on 18 November 2013, he had been asked only about his political activities in Denmark.[24] Therefore, counsel considers that the Board based its decision on the asylum seeker's political activities in Denmark, and not on those in the Islamic Republic of Iran, contrary to what the State party asserts in its observations. Counsel further submits that it seems clear in the Board's decision in the above-mentioned case that the main reason why the asylum seeker was granted refugee status was his interview for the film, and not his other activities in Denmark, including his role as spokesperson of the hunger strikers.

7.2 The author's counsel further reiterates that the author could also be considered as politically active both in the Islamic Republic of Iran and Denmark, as he had participated in the smuggling of material on the Democratic Party of Iranian Kurdistan from Iraq to the Islamic Republic of Iran, and while in Denmark he had participated in demonstrations and taken part in a hunger strike against the Iranian regime, during which photographs of him were taken and disseminated through his Facebook profile. In addition, like the other hunger strikers, the author gave an interview for the above-mentioned film, in which he identified himself with his real name and criticized the Government of the Islamic Republic of Iran. Counsel further reiterates that after giving the interview, the author learned that the film was propaganda for the Iranian regime, that it had been shown on Iranian television, and that the parts in which the hunger strikers appeared to be criticizing the Government

[23] Board decision of 18 November 2013. See also paras. 5.3 and 6.1 above.

[24] The author provides a full unofficial translation of the Board's decision dated 18 November 2013. The decision indicates that the applicant had alleged that in the Islamic Republic of Iran he had been a member of a forbidden political party, the Jebbheyeh Melli Mazhabi, for three years, that he had carried out several political activities while in Denmark, including as the spokesperson of those engaged in the hunger strike, and that he had participated in demonstrations, interviews and "exposing" articles. The applicant had also alleged that he feared that the Iranian authorities would recognize him because he had been filmed beating a police officer before leaving the Islamic Republic of Iran and because he had appeared in photographs that had been published by Iranian media, in which he could be seen participating in political activities in Denmark. The Board's decision referred to a "video sequence" and a radio interview in which the applicant had criticized the Danish refugee system and the Government of the Islamic Republic of Iran, and mentioned that the asylum seeker had been interviewed by an Iranian-born film director residing in Germany who had been filming a documentary on asylum seekers in Denmark. The Board had access to a clip in which it appeared that the film had been shown on national television in the Islamic Republic of Iran. It found that the asylum seeker had credibly explained his participation in the film and the views he expressed in it, and took into account that it appeared that the film had been edited to serve as propaganda for the Government of the Islamic Republic of Iran. The Board found probable that the asylum seeker could be exposed to a risk if returned to the Islamic Republic of Iran, given his participation in the film in conjunction with his illegal departure from the country, and considered that the asylum seeker could be questioned by the Iranian authorities on the assumption that his departure, long absence and participation in the film could reflect a critical attitude towards the Government. Therefore, the Board had granted him refugee status.

had been cut out. Counsel indicates that the author fears that given that the film director supports the Government of the Islamic Republic of Iran, he may have provided a full version of the film to the Iranian authorities. Counsel also reiterates that the Refugee Appeals Board has considered involvement in this film as a risk factor for other asylum seekers who have participated in it and has granted refugee status to at least two of them.[25] Furthermore, counsel indicates that the fact that the author has not been subjected to torture or ill-treatment since his return to the Islamic Republic of Iran does not mean that he will not be subjected to it in the future.

7.3 Counsel also informs the Committee that she has not been able to communicate with the author since February 2014. Before losing contact, the author had informed her that he had been questioned by the Iranian authorities twice, that his passport was still confiscated and that he was not allowed to leave the Kermanshah area. Counsel claims that this could mean that the author is still under investigation by the Iranian authorities and, therefore, considers that there is still a risk that they will find out about the above-mentioned film interview. Counsel further indicates that as of February 2014, the author was still hiding in his grandparent's house in Pabli village, but she does not know if he is still there, if he has left the country or if he has been arrested.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

[25] The author provided the Committee with another decision of the Refugee Appeals Board, dated 17 March 2014, and a partial unofficial translation of the decision. In that case, the asylum seeker claimed that he feared persecution if returned to the Islamic Republic of Iran because of his activities supporting the Democratic Party of Iranian Kurdistan since 2006. In addition, he had brought food to the peshmerga in the mountains four times and had been imprisoned for six days in 2008. The asylum seeker had left the Islamic Republic of Iran after the authorities had gone to his family's tent and arrested his uncle. After the asylum seeker had left, the authorities had gone to look for him at least once. The asylum seeker also alleged that he feared persecution in the Islamic Republic of Iran because of his political activities in Denmark, where he had continued to support the Democratic Party of Iranian Kurdistan by participating in demonstrations and in the hunger strike held in May 2012. The asylum seeker indicated that a photograph of him, taken while he was on the hunger strike, had been published in Iranian media. Moreover, he claimed that he had given an interview to a film director in which he had criticized the Government of the Islamic Republic of Iran. Afterwards, he learned that the film had been shown in the Islamic Republic of Iran and that the sections in which the persons interviewed criticized the regime had been cut from the film. The asylum seeker claimed before the Refugee Appeals Board that he feared that the film director, who appeared to be in favour of the Government, had provided the Iranian secret service with a full version of the film. The asylum seeker further claimed that he also feared persecution because he had become Christian while in Denmark. The Board found the applicant's explanation about the creation and distribution of the film plausible and therefore considered that it could not rule out the possibility that the applicant was known to the Iranian authorities and that they were aware of his views against the Government. In addition, the Board considered that the author had explained in a coherent way his other political activities in Denmark, and found credible that the author had anti-Government pictures on his Facebook profile. The Board also considered that the author had coherently explained the circumstances of his conversion to Christianity. After conducting an overall assessment of the author's claims, the Board had decided to grant him refugee status.

8.4 The Committee further notes the State party's objection to the admissibility of the communication regarding the author's allegations that his rights under articles 19 and 26 of the Covenant would be breached because of his removal to the Islamic Republic of Iran, as such allegations have not been substantiated. The Committee notes the author's allegations that his freedom of expression, as established by article 19 of the Covenant, would be violated by his removal to the Islamic Republic of Iran, as he would not be able to express his sympathy for Kurdish political parties and freely express his opinions. The Committee also notes the author's allegation that his removal to the Islamic Republic of Iran would violate his right to live free of discrimination as established by article 26 of the Covenant, given the situation of Kurds in that country, and taking into account his political support for Kurdish organizations. The Committee notes that the author has not provided any further information or evidence on how his rights under articles 19 and 26 of the Covenant have been or would be violated by the State party through his removal to the Islamic Republic of Iran in a manner that would give rise to an irreparable harm such as that contemplated under articles 6 and 7 of the Covenant.[26] Accordingly, the Committee concludes that in the circumstances of the present case, the author's allegations under articles 19 and 26 of the Covenant are incompatible with the provisions of the Covenant and declares them inadmissible under article 3 of the Optional Protocol.

8.5 The Committee also notes the State party's challenge to the admissibility of the communication on the ground that the author's claim under article 7 of the Covenant is unsubstantiated. It further notes that, according to the author, his removal to the Islamic Republic of Iran would violate his rights under article 7 of the Covenant. In this connection, he submits that he still faces a risk of torture or ill-treatment there because of the illegal activities he carried out before his departure from the Islamic Republic of Iran, namely, smuggling Democratic Party of Iranian Kurdistan materials from Iraq, because of his participation in several protests against the Iranian regime while in Denmark, including a hunger strike and an interview for a film in which he criticized the Iranian authorities, and because he is a failed asylum seeker and has been returned to the Islamic Republic of Iran without a passport or any valid travel document. In view thereof, the Committee considers that the author has sufficiently substantiated his allegations under article 7 of the Covenant for the purpose of admissibility.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal[27] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[28]

9.3 The Committee recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a

[26] See general comment No. 31, para. 12.

[27] See, inter alia, communications No. 2280/2013, *Y. v. Canada*, Views adopted on 22 July 2015, para. 7.2; No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2; No. 2314/2013, *Y. v. Canada*, Views adopted on 22 March 2016, para. 7.2.

[28] See communications No. 2280/2013, *Y. v. Canada*, para. 7.2; No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[29]

9.4 The Committee notes the author's claim that the State party failed to take into account that he faces a risk of being subjected to torture or ill-treatment because of his deportation to the Islamic Republic of Iran, as he is an ethnic Kurd and carried out illegal activities before his departure from the country, namely, smuggling Democratic Party of Iranian Kurdistan material into the Islamic Republic of Iran, and because of his political activities against the Government of the Islamic Republic of Iran while in Denmark, in particular his participation in demonstrations against that Government and in a hunger strike held in May 2012. The Committee also notes the State party's argument that the Refugee Appeals Board undertook a comprehensive and thorough examination of the evidence submitted by the author and, on the basis of that examination, considered that the author was not credible, as he had provided contradictory information regarding his departure from the Islamic Republic of Iran, and that his activities while in Denmark would not expose him to a risk upon return, since he had not demonstrated that he was exposed to the press or that he stood out to any particular degree, as he did not appear to be prominent in any of the photographs of the hunger strike to which the domestic authorities had access. The Committee further takes note of the State party's argument that the Committee must give considerable weight to the domestic authorities' findings, specifically those of the Refugee Appeals Board, as it is better placed to assess the facts in the author's case. The Committee observes that the author has not pointed to any procedural irregularities in the decision-making procedure by the Danish Immigration Service or the Board. Nor has he demonstrated that the decision to return him to the Islamic Republic of Iran was manifestly unreasonable or arbitrary in nature.

9.5 The Committee further notes the author's allegation that the interview he gave to a film director in which he criticized the Iranian authorities would enhance the risk he is exposed to insofar as the film director supports the Government of the Islamic Republic of Iran and may therefore have provided the authorities with a full copy of the film in which the author identified himself and expressed anti-Government views. The Committee also takes note of the author's allegation that the Refugee Appeals Board has granted refugee status to other asylum seekers who appeared in that film and that such participation was considered by the Board as a crucial element for deciding those cases. In this regard, the Committee notes the State party's argument that the author never mentioned the interview during the asylum proceedings, that the information is solely based on his statements and that he has not provided any satisfactory explanation as to why he did not mention it to the State party's authorities. The Committee also notes that in the decisions regarding other asylum seekers who participated in the film, the Refugee Appeals Board made an integral assessment of the personal circumstances of the applicants, which differ from those of the author. The Committee therefore considers that while the author disagrees with the factual conclusions of the Board, he has failed to show that they were arbitrary or manifestly erroneous or amounted to a denial of justice.

9.6 In the light of the above, the Committee cannot conclude that the information before it shows that the author would have faced a personal and real risk of treatment contrary to article 7 of the Covenant because of his return to the Islamic Republic of Iran.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to the Islamic Republic of Iran did not violate his rights under article 7 of the Covenant.

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[29] See, inter alia, communications No. 2280/2013, *Y. v. Canada*, para. 7.5; No. 2258/2013, *Rasappu v. Canada*, Views adopted on 4 November 2015, para. 7.3; and No. 2366/2014, *X. v. Canada*, Views adopted on 5 November 2015, para. 9.3.